

*In the Matter of Chuvonda Covington-Leach, et al.,  
County Correction Sergeant (PC2530E),  
Union County*  
DOP Docket Nos. 2004-3000 and 2004-2817  
**(Merit System Board, decided August 11, 2004)**

Chuvonda Covington-Leach, Reginald Darby, Joseph DeMarco, William Gargiles, Scott Groninger, Timothy Miller, Wanda Minch, Thomas Muir and Stanley Terrell, represented by Jim Roche, PBA, Local 199, appeal their ineligibility for the County Correction Sergeant (PC2530E), Union County examination. Roche also indicated that he had filed appeals on behalf of Gilbert Benitez, Jon Cutrufello, Sean Higgins, Shadwood Houston, Benjamin Jackson, William Lebers, Arturo Marin, Wayne Pryor and Edward Roberts, however, they did not file applications to take the subject examination.

The promotional examination for County Correction Sergeant (PC2530E), Union County, was announced with a closing date of May 27, 2003, open to employees who possessed an aggregate of three years of continuous permanent service as of the closing date as a County Correction Officer or a County Correction Officer, Bilingual in Spanish and English. The appellants were found ineligible for the examination because they did not possess the three years of experience in the County Correction Officer title. The subject examination was held on September 3, 2003. Although they were determined to be ineligible, Chuvonda Covington-Leach, Reginald Darby, Joseph DeMarco, William Gargiles, Scott Groninger, Timothy Miller, Wanda Minch, Thomas Muir and Stanley Terrell were conditionally admitted to take the examination. Joseph Duncan, who was also conditionally admitted, did not take the examination. Thus, the matter of his eligibility for the subject examination is moot. The resultant eligible list was promulgated on February 5, 2004 with 63 eligibles. To date, three appointments have been made.

By way of background, appellants and others were employed by the County of Union as County Correction Officers. The County of Union suffered a reduction in force and, in pre-layoff actions, appellants were transferred to the State Department of Corrections as Senior Correction Officers. Because the transfer occurred after the expiration of the Intergovernmental Transfer Pilot Program and prior to the promulgation of the Intergovernmental Transfer rules, the transfers were accomplished via rule relaxation. Fifty-six Union County Correction Officers were permitted to transfer to the State Department of Corrections, a different government jurisdiction, while the rules governing transfers, *N.J.A.C. 4A:4-7.1* only permitted the movement of employees between organizational units within the same governmental jurisdiction. The terms of the transfer agreement, signed by all transferees, included the statement, "Seniority will begin with the first day of State

service.” See *In the Matter of Richard Andrews, et al., Union County* (Commissioner of Personnel, decided May 15, 2001). Gilbert Benitez transferred to Monmouth County under similar circumstances. See *In the Matter of Giovanni Abad, et al., Union County* (Commissioner of Personnel, decided June 14, 2001). These transfers were effective April 1, 2001.

Subsequent to their transfer to the State Department of Corrections and Monmouth County, and when positions became available, appellants transferred back to Union County. It is noted that transfer rules permitting intergovernmental transfers were promulgated November 19, 2001, and these rules governed the transfer of the appellants back to Union County. Specifically, *N.J.A.C.* 4A:4-2.15(d) provides that in calculating seniority for promotional examinations, continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A (except in the case of an intergovernmental transfer of a police officer or a firefighter) shall not be deducted from seniority. *N.J.A.C.* 4A:4-7.4(b) provides that employees who are intergovernmentally transferred (except for an employee in a police or fire title) shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements.

Appellants filed appeals alleging that their seniority prior to their intergovernmental transfers should be included in determining their eligibility for the examination. Roche indicated that he did not know which of the individuals he represented had applied for the examination, but that for those who did, he supported their eligibility. The appointing authority also supports the appellants’ eligibility for the subject examination.

## CONCLUSION

At issue is whether seniority, for eligibility purposes, transferred with the transfer of the appellants. In the first transfer, from Union County to the State Department of Corrections and Monmouth County, the appellants’ seniority did not transfer. The transfer agreements provided that seniority began with the first day of State or Monmouth County service. Thus, when appellants transferred to the State Department of Corrections as Senior Correction Officers or Monmouth County, they lost the time spent in the County Correction Officer title in Union County. Conversely, the Intergovernmental Transfer rules which took effect November 19, 2001, prohibit the transfer of seniority only for police officer titles. Thus, when appellants transferred from the State Department of Corrections and Monmouth County to Union County, their seniority gained in the State Senior Correction Officer or County Correction Officer positions should have transferred back to Union County. Department of Personnel records do not reflect transfer of appellants’ seniority from the State Department of Corrections and Monmouth County back to Union County. Thus, appellants’ records should be corrected to

reflect the transfer of seniority earned as a Senior Correction Officer or County Correction Officer with Monmouth County back to Union County.

Even correcting this error, appellants do not meet the announced requirements as the first transfers took place on April 1, 2001, so appellants had less than two years and two months of seniority as of the May 27, 2003 closing date.

Appellants and others transferred to the State Department of Corrections and Monmouth County in lieu of a layoff. Had they not transferred, they would have been laid off and been eligible for placement on a Special Reemployment List. Instead, appellants worked for the State Department of Corrections as Senior Correction Officers or Monmouth County until positions again became available and appellants transferred back to Union County. Additionally, the appointing authority and the PBA Local 199 support the appellants' eligibility on the basis of aggregate seniority in County Correction Officer and Senior Correction Officer (State) titles. Accordingly, based on the unique facts of this case, good cause exists to permit the retention of appellants' seniority from Union County as if it had transferred, thereby establishing their eligibility for the County Correction Sergeant examination. The Board notes that Joseph Duncan, who was conditionally admitted, did not take the examination, and thus is not eligible to be placed on the list.

## **ORDER**

Therefore it is ordered that these appeals be granted and appellants be granted seniority for the time served in Union County as County Correction Officers prior to the first transfer. Appellants' records should further be corrected to reflect the time they served in Senior Correction Officer titles or with Monmouth County which should have transferred back to Union County. It is further ordered that the examinations of the appellants who were conditionally admitted to the County Correction Sergeant (PC2530E) examination be scored and, if appropriate, their names added to the eligible list for prospective employment opportunities only. Gilbert Benitez, Jon Cutrufello, Sean Higgins, Shadwood Houston, Benjamin Jackson, William Lebers, Arturo Marin, Wayne Pryor and Edward Roberts, did not apply to take the examination, and Joseph Duncan did not take the examination. Nevertheless, even though they are ineligible for admittance to the subject examination, Benitez, Cutrufello, Duncan, Higgins, Houston, Jackson, Lebers, Marin, Pryor and Roberts should receive the same adjustment and correction to their seniority.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.